IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2819 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA INSURANCE CO.LTD.

Versus

SURAJMAL VIRUMAL MULCHANDANI

Appearance:

MR PV NANAVATI for Petitioner
MR YOGESH S LAKHANI for Respondent No. 1
DELETED for Respondent No. 2
MR MAYUR R SHAH for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 24/07/2000

CAV JUDGEMENT

[Per D.C. Srivastava,J.]

The appellant, New India Assurance Company Ltd., in this appeal has challenged the award of the Motor Accident Claims Tribunal, Panchmahals Godhra rendered on 11th June, 1993 on a limited ground that the liability of

the insurance company in terms of the policy could not be more than Rs.1,50,000/- and that the tribunal was in obvious error in awarding the compensation of Rs.3,93,000/- together with interest at the rate of 15% per annum from the date of the application till realization with costs.

The facts under which this appeal arises can be narrated as under:

Surajmal Virumal Mulchandani, respondent No. 1 was going on his Hero Majestic Moped to his village on 20.10.1984 at about 10.00 p.m. when he was on Godhra Dahod Road in the outskirts of village Bhathawada, truck CPF 9453 came from behind and attempted to over take the moped driven by the respondent NO. 1. In an attempt to over take the moped the truck driver, due to his rash and negligent driving, hit the Moped from rear portion of the truck. The respondent no.1 was knocked down and he fell on the spot. He sustained serious injuries. Details how he was given treatment from one hospital to another are given in paragraph 2 of the judgment of the tribunal. We do not think it proper to burden this judgment by reciting those facts. He sustained fracture of skull as well as right hand fracture. Disability to the extent of 64% was noticed by the Doctors. Disability of the right hand was found to the extent of 10%. The Neuro Surgeon certified total disability to the extent of 67.6%. The injured was aged 28 years and he was running grocery shop. He filed the claim petition and initially claimed compensation of Rs.1,50,000/- but subsequently by amendment, claim of compensation was raised to Rs.4,50,000/-.

The tribunal, after considering the entire material on record, awarded compensation of Rs.3,93,000/- together with interest at the rate of 15% per annum and costs which was made payable by the appellant and the respondents no. 2 and 3. It is, therefore, this appeal by

the insurance company who was opposite party no. 3 before the tribunal.

In this appeal, respondent NO. 2 has been deleted who was the driver of the truck.

We have heard Shri P.V. Nanavaty, learned counsel for the appellants and Shri Yogesh Lakhani, learned counsel for the respondents. We have examined the judgment of the tribunal and also considered the insurance policy in question. We have also considered the cases cited by the learned counsel for the respective parties.

Shri P.V.Nanavaty has streneously urged on the basis of the two supreme court judgments and relevant provisions of section 95 of the Motor Vehicles Act, 1939 that the liability of the insurance company to the third party could not exceed Rs.1,50,000, in any case and that the award in excess of this amount against the appellant is not sustainable. The contention of Shri Lakhani, on the other hand, has been that since extra premium was charged covering the third party risk, the tribunal was justified in awarding compensation in excess of Rs. 1,50,000/-. Several cases were cited on behalf of the respondents. Two supreme court cases were cited by Shri P.V. Nanavaty. The cases cited by Shri Y.S.Lakhani are of Patna, Delhi and Rajasthan High Courts. The contention of Shri P. V. Nanavaty has been that all the decisions cited by Shri Lakhani run counter to the verdicts of the apex court in National Insurance Co. Ltd. v. Jugal Kishore and Others, AIR 1988 SC 719 and New India Assurance Co. Ltd. v. Smt. Shanti Bai and Others, AIR 1995 SC 1113.

We have examined the apex court judgments carefully. In the case of New India Assurance Co. Ltd. versus Shanti Bai, the apex court has made reference to the earlier pronouncement of National Insurance Co. versus Jugal Kishor (supra) and has also referred the another verdict of the apex court in M.K.Kunhimohammed v. P.A. Ahmedkutty AIR 1987 SC 2158.

Before enumerating the ratio of the two cases of the apex court referred to above, it would be desirable to reproduce section 95(2) of the Motor Vehicles Act, 1939 It provides that subject to the proviso to sub section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely :-

(a) where the vehicle is goods vehicle, limit of 1,50,000/- rupees in all including liabilities, if any, arising under the Workmen's compensation and in respect of death or bodily injury to employees (other than driver) not exceeding six in number being carried in the vehicle;

(b) where the vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for such individual passengers.

Thus, section 95(2)(b)(i) is relevant for our purpose which applies to the facts of the case before us for the obvious reason that the insured was not a passenger in the truck nor he was carried for hire or reward in the truck. The initial liability under this provision was 50,000/- rupees but now Shri Nanavaty has admitted that consequent upon the amendment in the Act of 1939 which came into force in October, 1982, the maximum liability in such cases is raised to Rs.1,50,000/. Relying upon this statutory liability, Shri Nanavaty has contended that the tribunal could not have awarded compensation exceeding Rs.1,50,000/-.

It is now to be seen what is the ratio of the apex court in the aforesaid two cases of New India Assurance Co. Ltd. versus Smt. Shanti Bai and National Insurance Co. Ltd. versus Jugal Kishore (supra).

In our opinion, the following ratio can be deduced from the above two cases.

(1) The motor vehicle can not be used by the owner unless it is covered at least "act only" class. policy.

(2) Owner of the vehicle cannot ply the same on public road unless it is insured.

(3) Insurance may be under "an act policy" only or it may be under comprehensive policy.

(4) It is the choice of the owner of the vehicle to get his vehicle insured as an "act only" policy and it is also his choice to get it comprehensively insured

(5) If it is a case of insurance under "an act only" policy, premium as prescribed in the tariff has to be paid by the owner of the vehicle to the insurer.

(6) If it is comprehensively insured, then, mere use of "comprehensive" in the insurance policy or use of the words "unlimited liability" in the insurance policy will not render the insurance company liable to an unlimited extent.

(7) If the vehicle is comprehensively insured, higher premium than that for "act policy" is payable depending on the estimated value of the vehicle.

(8) Comprehensive insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered upto the estimated value of the motor vehicle calculated according to the rules and regulations framed in this behalf.

(9) Comprehensive insurance of the vehicle and payment of higher premium on this score, however, does not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub sec.(2)) of sec. 95 of the Motor Vehicles Act,1939. For this purpose, a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf.

(10) Likewise, if the risk of any other nature for instance with regard to the driver or passengers etc. in excess of the statutory liability, if any, is sought to be covered, it has to be clearly specified in the policy and separate premium paid therefor. This is the requirement of tariff regulations framed for the purpose.

In New India Assurance CO. Ltd. versus Smt. Shanti Bai (supra), these principles were applied by the apex court and it was again reiterated that the comprehensive policy only entitles the owner to claim

reimbursement of the entire amount of loss or damage suffered upto the estimated value of the vehicle. It does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability. For this purpose, specific agreement is necessary which was found absent in the case of New India Assurance Company versus Smt. Shanti Bai (supra).

Keeping in view the above ratio of the apex court in the two cases, we have examined the insurance policy in this appeal. Xerox copy of the insurance policy is on the record of the tribunal and since it is not very legible, slightly legible xerox copy was supplied to us for our perusal. After examining the xerox copy so supplied,we found that in the end regarding limit of the amount of compensation liability under sec. 95 in respect of any accident, it was Rs.50000/- only. The insurance policy was issuedon17.12.1988. The accident occurred on 20.10.1984.The Act was amended in October, 1982 and maximum statutory liability on the date of accident was Rs.1,50,000/-. Consequently, recital in the insurance policy that the limit of the amount of compensation liability was Rs.50,000/- is irrelevant and deserves out right rejection. Presuming that it should have been Rs.1,50,000/-, we have examined whether there was any specific agreement between the owner and the insurer making the liability of the insurance company unlimited or that the insurance company was to remain statutorily liable to the extent of Rs.1,50,000/- only. The apex court in the above two cases has clearly laid down that mere use of the word "unlimited liability" or "comprehensive insurance" will not make any difference. If it is claimed that the policy was comprehensive, separate agreement between the owner of the vehicle and the insurance company has to be established. However, in both the cases, the apex court has not laid down that separate agreement should be on separate document bearing requisite stamp paper. Such an agreement has to be inferred if the insurance company charged additional or extra premium from the insured. That is what is precisely laid down in National Insurance CO. versus Jugal Kishore and others (supra) when it was observed that for this purpose, specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. It was further observed that this is the requirement of the tariff regulations framed for the purpose. The tariff regulations were not produced before us in the course of arguments. However, we have

extracted relevant tariff agreement quoted in the case of Dilip Kumar Saha versus Runnu Sarkar and another 1995 ACJ 353 Patna (Ranchi Bench) which we believe that it was tariff prevalent on the relevant date when the insurance policy was issued by the appellant in the case before us.

The schedule of tariff prescribing premiums for insurance of goods carrying vehicle based on their capacity and extent of such coverage as in force at the material time as per the "India Motor Tariff", for the commercial vehicles of the capacity in question, schedule of premium was as follows :

Licenced capacity of the vehicle	Own damage risk.	Liability "Act only" public liability.
(2)Not exceeding 3048kg	Rs.550/- +1.10% on IEV	Rs.240/- Rs.200/-

From the above tariff, it is clear that the licensed vehicle having carrying capacity of 3048 kg. (10 tons) schedule of premium for damage to the vehicle is Rs.550+1.10% IEV. Likewise, for liability to the public risk, schedule of premium is Rs.240/- and the premium for "act only" is Rs.200/- only.

Keeping in view this tariff schedule, if the premium was charged for "act only" liability, it should have been Rs.200/- only. But if the premium was charged at Rs.240/-, then, it will be deemed that there was specific agreement between the insured and the insurer to undertake the liability to pay the public risk. This is nothing but an agreement between the owner of the vehicle and the insured to charge additional and extra premium covering public risk

If in the light of this schedule, we examine the policy issued by the appellant in the instant case, we find that the premium of Rs.240.00 has been charged for third party premium described as TPP. Another additional premium of Rs.100/- has been charged which is styled as TPP Insurance. We interpret "TPP Insurance" as "Third Party Property Insurance" for which additional premium of

Rs.100/- was charged. Therefore, keeping tariff schedule in mind, we find that Rs.240/- were charged for Third Party Insurance which is nothing but premium for liability to the public risk. In addition to this, premium of Rs.100/- was charged for third party property insurance. This is also extra and additional premium charged by the insurance company.Charging of these two amounts will clearly indicate that there was separate agreement between the parties namely the insured and insurer that in case of any accident where damage is caused to the property of the third party, the insurance company will be liable to compensate for the whole damage. Likewise, if the injury is caused to the third party or third party dies, then the compensation has to be worked out keeping in view the provisions of the Motor Vehicles Act and limit of statutory liability will not be of any rescue to the insurance company. We are, therefore, unable to agree with the contention of Shri P.V. Nanavaty that no extra or additional premium was charged by the insurance company.

On Similar facts, before the Delhi High Court in the case of New India Assurance Company Ltd. Versus Pushpa Kakkar and others 1993 ACJ 328 where the controversy was different in the sense that the insurance policy or its copy was not filed, still from the statement of the witness examined by the insurance company it emerged that the insurance company charged premium of Rs.240.00 covering third party risk. According to the Delhi High COurt, in view of the schedule of premium in the tariff for "act only" liability, sum ofRs.200/- has been prescribed to be the premium and in case of liability to third party public risk, sum of Rs.240.00 has been provided. Since in that case, premium of Rs.240.00 was charged by the insurance company, it was held that the premium is more than 'act only" premium of Rs.200.00. As such, unlimited liability of the insurance company was upheld in this case. We do not find any force in the contention of Shri P. V. . Nanavaty that this case runs contrary to the ratio of the two apex court's verdict cited by us above. On the other hand, the view taken by the Delhi High COurt is in consonance with the ratio laid down by the apex court wherein it has been observed that in case separate agreement is established or extra premium is charged by the insurance company, the liability of the insurance company will not be limited to the statutory liability only.

Similar view was taken in the case of Dilip Kumar Saha versus Runnu Sarkar and another (supra). In this

case also, the insured had paid Rs.240.00 as premium for coverage of the liability of public risk. The Patna High Court observed that as against this for coverage of liability to the extent of minimum statutorily fixed liability which has been defined under the tariff as "act only" liability is only Rs.200/-. It was further observed that, therefore, there is no escape from holding that the respondent company is liable to indemnify the owner of the vehicle for the entire liability arising in respect of the claims by the public under the Act because of any accidental personal injury. This case also does not run contrary to the apex court verdict in the two cases cited by us in the foregoing paragraphs of this judgment.

Yet in another case of Oriental Insurance company versus Smt. Sunita Dhanda and another 1998 (1) TAC 621 the Rajasthan High Court was also of the View that in such cases, liability of the insurance company is to pay the entire amount of compensation awarded by the tribunal. Here also, the truck was insured by the insurance company. The insurance policy indicated that the premium of Rs. 240.00 was charged for the third party risk. It was undisputed that at the relevant time, premium for "act only" policy was Rs.200/- whereas for third party liability or liability of public risk, premium was Rs.240/-. Since Rs.240/- were charged as premium by the insured to cover the third party risk which was more than "act only" premium of Rs. 200/-, hence, the liability of the insurance company was found and held to be unlimited. This case also does not run counter to the view taken by the apex court in the two cases cited by Shri P.V. Nanavaty.

No other point has been pressed before us. We, therefore, do not find force in the contention of Shri P.V. Nanavaty that the insurance company is liable only to the extent of Rs. 1,50,000/- as statutory liability under section 95(2) (b) (i) of the Motor Vehicles Act, 1939. On the other hand, we find from the above analysis that the insurance company having charged additional premium is liable to compensate for the entire loss and damage caused to the third party.

Before parting with this judgment, we would like to mention again that in National Insurance Company versus Jugal Kishore (supra) the apex court further observed that likewise if the risk of any other nature for instance with regard to the driver or passengers etc. in excess of statutory liability if any is sought to be covered it has to be clearly specified in the policy and

separate premium paid therefor. If this observation of the apex court is kept in mind and the policy produced before us is examined, we find that for the limit of liability to two drivers and one cooley additional premium of Rs. 24/- was charged and further limit of liability to three coolies another amount of Rs.24/- was charged by the insurer. Thus, the insurer not only charged additional premium for third party risk but also charged additional premium for loss likely to be caused to the third parties property and also additional premium was charged for two drivers and four coolies. This is nothing but separate agreement charging additional and extra premium. As such, it is difficult to hold that the insurance company is liable statutorily to the extent of Rs.1,50,000/- only.

We, therefore, do not find any merit in this appeal which is hereby dismissed with no order as to costs.

24/07/2000 (D.C.Srivastava,J.)

(H.K.Rathod,J.)

Vyas